IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8633 of 2002
AND
CIVIL APPLICATION No.2644 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KRISHNALAL BAVJIBHAI PATEL

Versus

SOUTH GUJARAT UNIVERSITY

Appearance:

1. Special Civil Application No. 8633 of 2002
MR UTPAL M PANCHAL for Petitioner No. 1
MR DC DAVE for Respondent No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/04/2003

ORAL JUDGEMENT

#. This petition is filed by one Krishnalal Bavjibhai Patel, who is a Senate Member of the South Gujarat University. By filing this petition, he has prayed for issuance of a writ of quo-warranto for quashing and setting aside the appointment order passed by respondent No.1 - University, appointing respondent No.2 as the Registrar of the South Gujarat University. The case of the petitioner is that, respondent No.2 is not qualified to be appointed as Registrar of the said University on the ground that he is not fulfilling necessary criteria, as mentioned in the advertisement, which is at Annexure-B - page 18 in the compilation and, as per the same the qualification of the Registrar is prescribed as under.:

1. A Master's degree with at least 55% of the marks or its equivalent grade of B in the UGC Seven point scale.

2. At least 15 years of experience as Lecturer (Sr.Scale) / Lecturer with eight years in Reader's grade along with experience in educational administration.

OR

Comparable experience in research establishment and/or other institutions of higher education.

OR

15 years of administrative experience of which 8 years as Deputy Registrar or an equivalent post.

The say of the petitioner is that respondent No.2 is not qualified to hold the post as per the said advertisement, as, he is not having the Master's Degree with 55% of marks and that he is not having 15 years' administrative experience as prescribed in the advertisement.

#. Mr.Panchal has fairly submitted that, the petitioner is not alleging any mala fide against any of the members of the Syndicate. It is submitted by Mr.Panchal that respondent No.2 is not having 8 years' experience as Deputy Registrar, as required, as, he was working as Chief Accounts Officer and, even as the Chief Account Officer, he had put in hardly 4 years' service in the institution, to which he originally belonged to as well as he does not possess the Master's Degree with 55% marks. This argument is resisted by the University as well as by the selected candidate, i.e. respondent No.2. Mr.Dave submitted that respondent No.2 is already having

requisite qualification, as, he has put in more than 8 years' administrative experience and lastly he was holding an equivalent post, as, according to him, respondent No.2 was already serving on a post, which is equivalent to the post of Registrar. He submitted that there are no separate rules for appointment to the post of Registrar. He submitted that since respondent No.2 was coming through the University system, 55% of marks at the Master's Degree is not to be insisted, for which, he has relied upon the guidelines issued by the University Grant Commission ("UGC" for short) in this behalf. It is submitted that, therefore, appointment of respondent No.2 is in accordance with the UGC guidelines as well as in accordance with the advertisement issued. He submitted that, the UGC is not the party in these proceedings and in absence of the relevant party, i.e. UGC, no prayer can be granted. He, however, conceded that the advertisement could have been given, specifying necessary qualifications in clear terms. He submitted that, it is true that it is not mentioned in the advertisement about the relaxation part, by which, a person, who is coming from the University system, is not required to obtain 55% of marks at the Master's Degree Course and in view of that ambiguity in the advertisement, perhaps a genuine candidate might not have offered himself for such appointment and in that view of the matter, the University has decided to issue a fresh advertisement inviting fresh applications for appointment to the post of Registrar and for that purpose, fresh advertisement will be given and in the said advertisement, appropriate particulars will be given, in conformity with the UGC guidelines, applicable for appointment to the post of Registrar of the University. He, therefore, submitted that the University will readvertise the post of Registrar and will give appropriate advertisement, as submitted by him above. In my view, since the University has agreed to readvertise the post and Mr.Upadhyay, who is appearing for the selected candidate, also submitted that he has no objection if the post in question is readvertised, reserving the right of respondent No.2 to apply again, on the basis of such advertisement, now, nothing further is required to be done in this petition.

#. It is required to be noted that the petitioner is not having any personal interest, in any manner, as, this petition is filed for issuance of a writ of quo-warranto. However, it is required to be noted that respondent No.2 is already selected by the University on the basis of the earlier advertisement and Mr.Upadhyay has submitted that, he has already resigned from the earlier employment. Not only that, it is not in dispute that before this Court

granted interim relief, respondent No.2 was functioning as the Registrar of the University. In my view, till the University completes the aforesaid process of finalising the appointment of Registrar, by inviting fresh applications, respondent No.2 should be allowed to work as the Registrar on ad hoc basis, so that, the work of the University may not suffer. It is, however, clarified that, by allowing respondent No.2 to work as the Registrar during the intervening period, respondent No.2 will not be entitled to claim any equity or benefit in his favour for getting appointment as the Registrar. It will be open for respondent No.2 herein to apply again in pursuance of the fresh advertisement, which may be issued by the University, and, thereafter, the University may immediately finalise the question. The University shall proceed with the applications, if any, received, on the basis of the new advertisement and, thereafter, finalise the question of appointment of the Registrar of the South Gujarat University. The said process is to be completed as expeditiously as possible and preferably within a period of three months from today.

#. Mr.Panchal submitted that till the University invites fresh applications and finalise the question of appointment of the Registrar, respondent No.2 may not be permitted to function even on ad hoc basis, as, at present the Deputy Registrar is already given the additional charge of the post of Registrar. However, Mr.Dave submitted that in view of the heavy work-load, the University finds it difficult to continue to assign additional work to the Deputy Registrar by way of allowing him to do extra work by way of additional charge. He submitted that in view of the administrative exigency, respondent No.2, who was otherwise selected by the entire body of Syndicate, be allowed to function on ad hoc basis. In my view, considering the fact that the petitioner has no personal interest in the matter, respondent No.2 is permitted to work on ad hoc basis as Registrar till the new appointment is made. However, as stated above, appointment will be purely on ad hoc basis. Accordingly, the following order is passed:-

This petition is partly allowed. Appointment of respondent No.2 on the basis of the advertisement issued, which is at Annexure-B, is quashed and set aside. The respondent No.2 is permitted to function as the Registrar on ad hoc basis till the new appointment is made by the University. The University shall complete the process of filling up the said post of Registrar within a period of three months from today. It is clarified that since the University has decided to issue a fresh advertisement,

inviting applications for appointment to the post of Registrar, it is not necessary to examine, whether respondent No.2 was holding the requisite qualifications as per the UGC guidelines or not, as, this question has become academic in view of the fact that the University has decided to issue fresh advertisment for the post in question. Interim relief granted earlier by this Court stands vacated.

#. In view of the above order, Civil Application also stands disposed of accordingly.

(P.B.Majmudar,J)
(pathan)